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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,632	03/26/2004	Ting Wang	03027	9881

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NEC LABORATORIES AMERICA, INC.  
4 INDEPENDENCE WAY  
PRINCETON, NJ 08540

EXAMINER

ULLAH, AKM E

ART UNIT PAPER NUMBER

2874

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/810,632

Applicant(s)

WANG ET AL.

Examiner

Akm Enayet Ullah

Art Unit

2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-16 and 18 is/are rejected.
- 7) ☒ Claim(s) 4-6, 16, 17, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

***Detailed Action***

*Applicant cooperation is requested in correcting any errors of which applicant may become aware in the specification.*

***Status of the Application***

*This case is a divisional of 10/ 205,089 filed on July 24, 2002 which is being allowed.*

*Claims 1- 20 are pending in this application.*

*Claims 4-6, 16-17 and 19-20 are objected as being dependent upon a rejected base claims.*

*Claims 1-3, 7-15 and 18 are rejected under 35 USC § 102 and 103.*

*If applicant is aware of any prior art or any other co- pending application not already of record, he/she is reminded of his/her duty under 37 CFR 1.56 to disclose the same.*

***Rejected under 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Liu et al (US Pub. No. 2004/0086218 A1) or Shirasaki (US Pub. No. 2002/0196816) or Goncharov et al (USP NO. 6,583,873).

Both references disclose a device for an optical communication network comprising:

---- A diffraction grating that receives an input signal and creates a dispersed signal,

----- a pair of shutters that selectively block portions of the dispersed signal so as to define a tunable passband for the device.

----- For details pages 7-9 of Shirasaki et al and under summary of the invention of Liu et al and Goncharov et al.

***Rejected under 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 7-15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baney et al (USP NO. 6,486,984) in view of Dan Sadot et al (Publication cited by applicant).

Baney et al disclose an optical communication network comprising:

---- a first tunable filter that is adapted to receive an input signal and to drop a first range of channels in the input signal

----- a second tunable filter that is adapted to receive a dropped signal from the first tunable filter and that is adapted to drop a second range of channels from the dropped signal from the first filter, such that an intersection between the first range of channels and the second range of channels defines a tunable passband for the device.

For details see columns 1-3 of Baney et al.

Baney et al fails to disclose that the tunable filters further comprises components selected from the group comprising, Fabry - Perot interferometers, fiber Bragg grating, Mach- Zender interferometers as claimed in claims 6 and 13.

Dan Sadot et al (publication) is the evidence that ordinary skill in the art would find a reason, suggestion or motivation to have fiber filters such as fiber gratings and fiber Fabry Perot as claimed in the optical communication device.

One of ordinary skill in the would have found it obvious to use the tunable filters further comprises components selected from the group comprising, Fabry=Perot interferometers, fiber Bragg grating, Mach- Zender interferometers as a tunable filter of Dan Sadot et al publication et al in Baney et al since, the abstract of the publication mentioned the use various tunable filters for WDM networks which provide low insertion loss, narrow bandwidth, high sidelobb suppression, large dynamic range, fast tuning speed and cost effectiveness.

***Claims are Objected, Allowable Subject Matter***

Claims 4-6, 16-17 and 19-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Cited Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Laufer (USP NO. 6,853,452) is also cited to show atypical device, which include a shutter, mirror and a tunable bandpass for the device.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akm Enayet Ullah whose telephone number is 571-272-2361. The examiners can normally be reached on Monday through Wednesday from 5:30 am to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick, can be reached on Monday through Friday whose telephone number is 571-272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Akm Enayet Ullah  
Primary Examiner  
Art Unit 2874

*Aullah*

*January 22, 2006*